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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

MAURY V. COMMONWEALTH.—Decided at Richmond, December 5, 1895.—*Keith, P*:

1. **CONSTITUTIONAL LAW**—*Right to sue a State—vested rights—case at bar.* The privilege of suing a State is not an absolute right, but is allowed as a matter of grace. It may be extended or withheld at the pleasure of the State; and, once granted, it may be recalled at pleasure, unless during its existence rights have vested under or by virtue of it which the State has no constitutional right to defeat or impair by its subsequent recall. Further, if an act merely authorizes a judicial inquiry into the rights of parties, but does not confer the power to enforce the results of such inquiry, its repeal is not prohibited by the Constitution of this State or of the United States. Tested by these rules, the right conferred by sec. 408 of the Code (amended by the Act of February 22, 1890—Acts 1889-'90, pp. 76-77), to test the genuineness of certain papers alleged to be coupons cut from bonds of the State, in the manner therein specified, did not confer upon the holder of such coupons such vested right that the State could not take away the right thereby conferred; and the Act of February 21, 1894 (Acts 1893-'4, p. 381), repealing sec. 408 of the Code and the Act amendatory thereof is valid and constitutional.

SPOONER'S ADMR. V. HILBISH'S EXOR. AND OTHERS.—Decided at Richmond, December 5, 1895.—*Riely, J*:

1. **PERSONAL REPRESENTATIVE**—*Privity with decedent—impeachment of decedent's acts—incomplete gifts.* The personal representative of a decedent is in privity with the decedent, and cannot impeach as fraudulent a transaction of his decedent in his lifetime. But such personal representative, nevertheless, has the right, and it is his duty, to recover as assets of his decedent's estate the subject of a gift or voluntary assignment which was not perfected by the decedent in his lifetime.

2. **CHANCERY PLEADING**—*Suits to avoid incomplete gifts by decedent—parties.* A creditor of a decedent who is also his personal representative may maintain a suit in his dual capacity to declare null an alleged assignment made by the decedent, in his lifetime, of a policy on his life, where it is charged that neither the policy nor the assignment was delivered to the assignee; that the assignment was voluntary and without consideration; and that there is a deficiency of assets to pay the debts of the decedent. He may sue in his own right and make himself a party defendant in his representative capacity. The personal representative was a necessary party to the suit, but, under the facts of this case, it was immaterial whether the personal representative was plaintiff or defendant.

3. **MULTIFARIOUSNESS**—*No general rule—convenience—injury to parties—multiplicity of suits.* It is impossible to lay down any universal rule as to what constitutes multifariousness, but each case must be determined by its own particular circumstances. Courts look particularly to convenience in the administration of justice, and if this

can be accomplished in the mode of proceeding adopted, the bill will not be declared multifarious unless the course pursued is so injurious to one party as to make it inequitable to accomplish the general convenience at his expense. This is especially true when the mode adopted will prevent a multiplicity of suits.

4. GIFTS—*Delivery necessary.* A gift to be valid must be executed. Being without consideration, there must be an actual delivery by the donor to the donee, or to some one for him, of the thing given, or of the means of obtaining the subject of the gift without further act of the donor to enable the donee to reduce it to his own possession. Without such delivery the gift is incomplete, and cannot be enforced against donor, or his personal representative.

5. GIFTS—*Delivery—assignment without delivery.* If the assured in a policy on his own life, intending to make a gift thereof to a third party, without consideration, executes an assignment thereof in duplicate, whereby the benefit of said policy is assigned to such third party, and delivers one of the assignments to the insurance company for its protection and not as agent of the assignee, and fails to deliver either the policy or the assignment thereof to the assignee, this is an incomplete gift, and cannot be enforced by the assignee either at law or in equity.

ROBERT M. BURKE V. ALICE E. SHAVER.—Decided at Richmond, December 5, 1895.—*Cardwell, J.*:

1. PROMISE OF MARRIAGE—*Illegal consideration.* A promise of marriage made in consideration of sexual intercourse is illegal and void.

2. INSTRUCTIONS—*Law applicable to the evidence.* Instructions which are founded on evidence in the cause should be given if they correctly propound the law as applicable to such evidence; but if not so applicable they should be refused, however correct they may be as abstract legal propositions.

3. CONTRACTS—*Repudiation of before time of performance—when suit may be brought.* If one repudiates his promise and declares that he will not be bound by it, the promisee need not wait for the time of performance to arrive, and if the engagement is general need not request its fulfillment, but may sue at once for the breach.

4. EVIDENCE—*Irrelevancy.* In an action for breach of promise of marriage it is not error to refuse to allow the defendant to introduce in evidence letters written by the plaintiff to another than the defendant, when it appears that the letters are not improperly indelicate and in no way compromise the character of the writer, for which purpose they were offered in evidence.

5. EVIDENCE—*Examination of witnesses—discretion of trial court.* The examination of witnesses lies chiefly in the discretion of the trial court, and its exercise is rarely, if ever, to be controlled by an appellate court. Much latitude of discretion should be allowed the trial court in the matter of recalling witnesses, and its action will not be reversed by an appellate court except for palpable error.

FERGUSON & HUTTER V. GROTTOS COMPANY.—Decided at Richmond, December 5, 1895.—*Harrison, J.*:

1. COMMON LAW ACTION—*Venue—case at bar.* If a corporation, at its home office, employs an agent to sell its stock; and subsequently informs its agent by tele-